

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

DARREN HARRIS,

Plaintiff,

v.

KIM , et al.,

Defendants.

CASE NO. 1:05-cv-00003-AWI-SKO PC

ORDER DENYING MOTION FOR  
ISSUANCE OF SUBPOENAS DUCES  
TECUM AS PREMATURE

(Doc. 102)

Plaintiff Darren Harris, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on January 3, 2005. This action is proceeding on Plaintiff's fourth amended complaint against Defendants Olivarria, Williams, and Kim for violation of the Eighth Amendment, and against Defendants Olivarria and Lowden for violation of the First Amendment. Pursuant to the scheduling order filed on July 18, 2012, the deadline for the completion of all discovery is March 18, 2013. On September 12, 2012, Plaintiff filed a motion seeking the issuance of seven blank subpoenas.

Plaintiff may be entitled to the issuance of a subpoena commanding the production of documents from a non-party, Fed. R. Civ. P. 45, and to service of the subpoena by the United States Marshal, 28 U.S.C. 1915(d). However, the Court will consider granting such a request *only if* the documents sought from the non-party are not equally available to Plaintiff and are not obtainable from Defendant through a request for the production of documents. Fed. R. Civ. P. 34. If Plaintiff wishes to make a request for the issuance of a records subpoena, he may file a motion requesting the issuance of a subpoena duces tecum that (1) identifies with specificity the documents sought and

1 from whom, and (2) makes a showing in the motion that the records are only obtainable through that  
2 third party.

3 As set forth above, Plaintiff's motion for the issuance of subpoenas duces tecum is premature  
4 and it is HEREBY DENIED on that ground.

5  
6 IT IS SO ORDERED.

7 **Dated: November 28, 2012**

**/s/ Sheila K. Oberto**  
UNITED STATES MAGISTRATE JUDGE